

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

Brian Dalton; New England Firearms)	
Academy, Inc.; John Troisi; Big Jack’s Auto)	
Service and Towing, on behalf of themselves)	C.A. No. 1:23-cv-11216-WGY
and a class of similarly situated persons,)	
)	
Plaintiffs,)	
v.)	
)	
Yvonne Hao, in her official capacity as)	
Secretary of Economic Development,)	
Massachusetts Growth Capital Corporation,)	
and Lawrence D. Andrews, in his official)	
capacity as President and CEO of)	
Massachusetts Growth Capital Corporation,)	
)	
Defendants.)	

PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs Brian Dalton; New England Firearms Academy, Inc.; John Troisi; and Big Jack’s Auto Service and Towing hereby move for class certification under Fed. R. Civ. P. 23(b)(2). The proposed class will be represented by Plaintiffs Brian Dalton and his business, the New England Firearms Academy; and John Troisi and his business, Big Jack’s Auto Service and Towing (“Plaintiffs” or “small business owners”). The proposed class consists of all small businesses and small business owners that would have been eligible to apply for Massachusetts’s Inclusive Recovery Grant Program if the business were minority-owned, woman-owned, or LGBTQ+-owned.

In support of the relief sought herein, Plaintiffs refer this Court to the Memorandum in Support of Class Certification, filed in conjunction with this motion. As more fully discussed in that Memorandum, class certification is warranted because all the requirements for class

certification under Rule 23 are met. First, the proposed class contains too many class members to make joinder practicable. Although this Court has held that the numerosity requirement can typically be satisfied with just 40 class members, this class likely consists of hundreds—if not thousands—of putative class members. Second, there are questions of law common to the members of the class. The claims of the class members turn on the resolution of the equal protection issues presented in this case, and a court decision in favor of Plaintiffs will inure to the benefit of every member of the class. Third, Plaintiffs satisfy the typicality requirement because Plaintiffs’ claims share the same legal theory as the claims of the class: that Massachusetts’s eligibility criteria violate the Equal Protection Clause of the Fourteenth Amendment by distinguishing individuals on the basis of their race, sex, and sexual orientation. Fourth, Plaintiffs and their counsel will adequately represent the interests of the absent class members. Plaintiffs will vigorously pursue this lawsuit especially because much-needed COVID-19 relief is at stake. Plaintiffs’ counsel are employed by a public interest organization that is highly experienced in litigating cases involving equality before the law and has garnered 17 wins before the Supreme Court of the United States—including three in recent months. Finally, this Court should certify the proposed class under Rule 23(b)(2) of the Federal Rules of Civil Procedure, because Plaintiffs seek primarily declaratory and injunctive relief rather than monetary damages. This Court should grant Plaintiffs’ Motion for Class Certification.

REQUEST FOR ORAL ARGUMENT

Plaintiffs hereby respectfully request a hearing on this motion under Local Rule 7.1(d).

CERTIFICATE OF CONFERRAL PURSUANT TO LOCAL RULE 7.1(A)(2)

Undersigned counsel certifies that counsel for Plaintiffs met and conferred in good faith with counsel believed to represent Defendants to resolve or narrow the issue.

DATED: June 7, 2023.

Respectfully submitted,

PACIFIC LEGAL FOUNDATION

By: /s/ Jonathan M. Houghton

JONATHAN M. HOUGHTON

(BBO 641688)

3100 Clarendon Blvd., Suite 1000

Arlington, VA 22201

Telephone: (202) 888-6881

JHoughton@pacificlegal.org

ANDREW R. QUINIO*

JOSHUA P. THOMPSON*

555 Capitol Mall, Suite 1290

Sacramento, California 95814

Telephone: (916) 419-7111

AQuinio@pacificlegal.org

JThompson@pacificlegal.org

Attorneys for Plaintiffs

**Pro Hac Vice*

CERTIFICATE OF SERVICE

I, Jonathan M. Houghton, hereby certify that on June 7, 2023, I caused the foregoing Motion to be electronically filed with the Clerk of Court, using the CM/ECF system. The foregoing Motion was served by U.S. Mail on the following persons:

Yvonne Hao, Secretary of Economic Development
Executive Office of Economic Development
1 Ashburton Place, Room 2101, Boston, MA 02108

Massachusetts Growth Capital Corporation
Schrafft's City Center
529 Main Street, Suite 201
Charlestown, MA 02129

Lawrence D. Andrews, Pres. and CEO, Massachusetts Growth Capital Corporation
529 Main Street, Suite 201
Charlestown, MA 02129

Office of Attorney General
Andrea Joy Campbell
One Ashburton Place
Boston, MA 02108

/s/ JONATHAN M. HOUGHTON
JONATHAN M. HOUGHTON
(BBO 641688)